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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BH92

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revisions to Sea Turtle Release Gear; Amendment 49

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 49 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 49) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 49 would add three new devices as options for fishermen to meet requirements for sea turtle release gear, and would simplify and clarify the requirements for other sea turtle release gear. The new devices would provide additional options to fulfill existing requirements for carrying sea turtle release gear

on board vessels with Federal Gulf commercial or charter vessel/headboat reef fish permits. Amendment 49 would also modify the FMP framework procedure to allow for future changes to release gear and handling requirements for sea turtles and other protected resources. The purpose of Amendment 49 is to allow the use of new devices to safely handle and release incidentally captured sea turtles, clarify existing requirements, and streamline the process for making changes to the release devices and handling procedures for sea turtles and other protected species.

DATES: Written comments on Amendment 49 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on Amendment 49 identified by "NOAA-NMFS-2018-0087" by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0087*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit all written comments to Susan Gerhart,

NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 49 may be obtained *www.regulations.gov* or from the Southeast Regional Office website at *https://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html*. Amendment 49 includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act analysis.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS

Southeast Regional Office, telephone: 727-824-5305; email:
susan.gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 49 was prepared by the Council, and Amendment 49, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Endangered Species Act (ESA) directs all Federal agencies to insure that any action they authorize, fund, or carry-out does not jeopardize the continued existence of endangered or threatened species, or destroy or adversely modify designated critical habitat. The ESA requires that

any Federal agency proposing an action that may adversely affect ESA-listed species or critical habitat formally consult with the U.S. Fish and Wildlife Service or NMFS (*i.e.*, consulting agencies).

In February 2005, NMFS issued a biological opinion (2005 BiOp), in accordance with section 7 of the ESA, that evaluated the impact of the Gulf reef fish fishery on endangered sea turtles and smalltooth sawfish. The 2005 BiOp concluded that the anticipated incidental take of sea turtles and smalltooth sawfish by the Gulf reef fish fishery was not likely to jeopardize their continued existence, or destroy or adversely modify designated critical habitat; however, the 2005 BiOp required that reasonable and prudent measures be taken to minimize stress and increase the survival rates of any sea turtles and smalltooth sawfish taken in the fishery.

In response to the 2005 BiOp, the Council developed measures in Amendment 18A to the FMP to increase the likelihood of survival of released sea turtles and smalltooth sawfish caught incidentally in the Gulf reef fish fishery. The final rule implementing Amendment 18A required vessels with Federal commercial or charter

vessel/headboat permits for Gulf reef fish to possess a specific set of release gear, and comply with sea turtle and smalltooth sawfish handling and release protocols and guidelines (71 FR 45428, August 9, 2006). Fishermen on these same federally permitted vessels are also required to maintain a reference copy of the NMFS sea turtle handling and release protocols document titled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury" (Release Protocols), in the event a sea turtle is incidentally captured. These Gulf reef fish permit holders are also required to post a NMFS placard of sea turtle handling and release guidelines inside the wheelhouse, or in an easily viewable area on the vessel if there is no wheelhouse.

Since implementation of Amendment 18A in 2006, the Release Protocols have been revised twice, once in 2008, and again in 2010. Currently, NMFS is drafting a revision to the Release Protocols and would include the recently approved sea turtle release devices if NMFS implements Amendment 49. However, fishermen participating in the reef fish fishery cannot use these devices to meet sea turtle

release gear requirements until they are implemented via regulations.

Actions Contained in Amendment 49

Amendment 49 would add three new sea turtle handling and release devices, clarify the requirements for other currently required gear, and modify the FMP framework procedure to include future changes to release gear and handling requirements for sea turtles and other protected resources. NMFS and the Council are proposing these changes to provide additional flexibility to fishermen in complying with sea turtle release gear requirements, to aid fishermen and law enforcement with compliance and enforcement efforts by clarifying existing requirements, and to allow for more rapid implementation of regulatory changes to release gear and handling requirements.

New Sea Turtle Release Gear

The final rule for Amendment 18A established the requirement for sea turtle release gear to be carried on board vessels with Federal commercial and charter vessel/headboat reef fish permits, and specified the devices allowed to meet this requirement. Amendment 49 would add three new sea turtle release and handling devices

that have been approved for use by the NMFS Southeast Fisheries Science Center (SEFSC), providing more options for fishermen to fulfill the sea turtle gear requirements. Details of the construction requirements for these new devices can be found in Amendment 49, and would be included in the new Release Protocols, if subsequently approved by NMFS. NMFS expects the proposed new release devices would increase flexibility for fishermen and regulatory compliance within the fishery, which may result in positive benefits to sea turtles.

Two of the new sea turtle handling devices are a collapsible hoop net and a sea turtle hoist (net). Both of these devices are more compact versions of the currently required long-handled dip net, and would be used for bringing an incidentally captured sea turtle on board the fishing vessel to remove fishing gear from the sea turtle. For the collapsible hoop net, the net portion is attached to hoops made of flexible stainless steel cable; when the collapsible hoop net is folded over on itself for storage, its size reduces to about half of its original diameter. Additionally, there are two versions of the sea turtle hoist. One version consists of the net portion securely

fastened to a frame, providing a relatively taut platform for the sea turtle to be brought on board. Another version creates a basket with the frame and net that holds the sea turtle as it is brought on board. Both the collapsible hoop net and the sea turtle hoist use rope handles attached to either side of the frame, in place of the rigid handle on the dip net. Generally, the collapsible hoop net or hoist would be used to bring sea turtles on board vessels with a high freeboard when it is not feasible to use a dip net.

The third new device is a dehooker that can be used to remove an externally embedded hook from a sea turtle. This device has a squeeze handle that secures the hook into notches at the end of the shaft of the dehooker, so the hook can be twisted out. This new device would provide another option for fishermen to comply with the regulation for a short-handled dehooker for external hooks.

Requirements for Existing Sea Turtle Release Gear

Amendment 49 also would also update the requirements of some currently approved devices for clarity and simplicity, and to aid fishermen and law enforcement with compliance and enforcement efforts. These updates would include more specific measurements for sea turtle release

gear. The revisions would provide for either a minimum size dimension or a size range for the short-handled dehookers for external and internal hooks, bite block on the short-handled internal use dehooker, long-nose or needle-nose pliers, bolt cutters, and the block of hard wood and hank of rope when used as mouth openers and gags. Other proposed changes are listed below.

Current regulations specify that short and long-handled dehookers must be constructed of 316L stainless steel, which is resistant to corrosion from salt water. The SEFSC has also approved 304L stainless steel for the construction of all short-handled and long-handled dehookers. This proposed additional grade of stainless steel is commonly available and is also corrosion resistant.

Another required device to assist with removing fishing gear from a sea turtle is a pair of monofilament line cutters. Current regulations state that the monofilament line cutters must have cutting blades of 1-inch (2.54 cm) in length (Appendix F to 50 CFR part 622). However, SEFSC has clarified that the blade length must be a minimum of 1 inch (2.54 cm) but could be longer.

Another required gear type is mouth openers and gags, used to hold a sea turtle's mouth open to remove fishing gear. At least two of the seven types of mouth openers and gags are required on board. Current regulations state the canine mouth gags, an option for this gear requirement, must have the ends covered with clear vinyl tubing, friction tape, or similar, to pad the surface. However, SEFSC determined that this was not necessary and could result in the canine mouth gags not functioning properly. Amendment 49 would remove the requirement to cover the ends of the canine mouth gags with these materials from the regulations.

Lastly, a life-saving device on a vessel, such as a personal flotation device or life ring buoy, may currently be used as the required cushion or support device for a sea turtle brought on board a vessel to remove fishing gear. However, Amendment 49 would add language to clarify that any life-saving device used to fulfill the sea turtle safe handling requirements cannot also be used to meet U.S. Coast Guard safety requirements of one flotation device per person on board the vessel.

FMP Framework Procedure

Currently, adding or changing careful release devices and protocols for incidentally caught sea turtles and other protected species requires an amendment to the FMP. This limits the Council and NMFS' ability to implement new release devices and handling requirements in a timely manner. Amending the FMP through the FMP amendment rulemaking process generally involves more detailed analyses and a lengthier timeline prior to implementation than rulemaking done through a framework procedure. However, the FMP contains a framework procedure to allow the Council to modify certain management measures via an expedited process (see 50 CFR 622.42). The FMP framework procedure was last modified by the final rule implementing Amendment 38 to the FMP (78 FR 6218, January 30, 2013).

Amendment 49 would allow changes to the sea turtle release gear and handling techniques under the framework procedure. For example, the Council could more quickly add a new release device for sea turtles if approved by the SEFSC. The Council decided that making these changes through an expedited process may have beneficial biological and socio-economic impacts, especially if the changes respond to newer information. The Council concluded that

the framework procedure would still allow adequate time for the public to comment on any future proposed regulatory changes.

Proposed Rule for Amendment 49

A proposed rule that would implement Amendment 49 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 49 for Secretarial review, approval, and implementation. Comments on Amendment 49 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to Amendment 49 or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 49. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or

the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2018.

Margo Schulze-Haugen,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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